REPORT ON THE QUAY CASE

Majority Says Legislature Must Fill the Office.

MINORITY SAYS GOVERNOR.

gestion of Vacancy in a Term or Whether There Never Has Been an Election to Fill the Office.

Washington, D. C., Jan. 23,-The repous of the committee on privileges and tions in the case of M. S. Quay, who ims a seat in the U.S. Senate on the strength of an appointment from the vernor of Ponnsylvania, were present. in the Senate today. The majority port, opposing the seating of Mr. Quay, was signed by Senators Caffery, Pettus, Turley, Harris and Burrows, the est named the only Republican signing It. The minority report bears the sigsatures of Senators Hoar, Chandler, Pritchard and McComas, all Republies, and advocates giving the seat to

The majority report first reviews the rumstances under which Mr. Quay's ontment was made, including the gre of the Pennsylvania legislature elect a senator. It then says:
After a vacancy in the office of U.

s senator occurs or comes to pass, if the next legislature does not fill it, it tisues to exist. It is the same va Now the State ive is given power to make a temwary appointment in ease of a vaof not as long as it continues or gar, but only until the next meeting the legislature, which is then rewas that the paramount intent to have the legislature choose the senators and that, whenever the egisture has had the opportunity to ars, the executive has no power oint. And when we take the phrase, racancies happen by resignation, or berwise, during the recess of the legsiture of any State, if we concede that the general word 'otherwise' is not quilfied nor limited by the specific word resignation, and that it includes ancies which are caused by efflux of time and which can be foreseen as well avacancies which are caused by a casevent and which cannot be foreseen, It must be construed and defined ith reference to the balance of the se so as to give effect to all its arts; and it thus results that the vaey, no matter how it is produced. must happen, take place or begin during recess of the legislature; and this of self would be decisive against Mr.

en by the legislature of his State is likely to be the choice of the majority of the citizens of his State. A senator who is appointed by an ex-ecutive is frequently only the personal or political favorite of the executive. "The legislature, as we construe the oses the senator in the first tance. If he declines to serve or dies before he is inducted into office, or if ter qualifying, he dies, resigns, or is expelled, the executive may make a temorary appointment until the legislameets again; or, if, owing to

thanges in State constitutions, the ure, which is authorized to fill the orm at its commencement cannot meet atil after the term commenced, the recutive can also make a temporary

Every contingency is thus provided for except the sole contingency that the legislature will fail to, perform its form duty. Against a contingency of this kind the framers of the Constituon did not intend to provide After discussing at length the circum-

tances under which the Constitution was framed, the majority announces conclusion as follows: We think that the framers of the onstitution never contemplated nor

atended to provide for a case where a sate, by its own deliberate act, should prive its legislature of the power to If an entire term at its beginning. In r opinion they never intended to give executive of a State the power to fill sentire term by original appointment pless, possibly, in a case where the sislature had chosen and the person ected had refused to accept or died re qualification. e conclude that the power of appointent was not to be exercised unless be vacancy occurred in the recess of be legislature and was occasioned by me casualty like death or resigna-

The report then quotes numerous precedents, beginning with that of Ken-sey Johns, of Delaware, in 1794, and closing with the case of Henry W. Cor-bett, of Oregon, in 1898. It then ends

The statement of these cases and Precedents shows that from the beginning of the government to the present mate has never recognized he right of a State executive to make appointment where scancy happened or occurred during session of the legislature. It shows, ather, that for twenty-five years, the Senate has refused to recognize the right of a State executive to make a appointment, even where e vacancy happened or occurred dura recess of the legislature, if the egislature either before or after coursed and prior to the date of the appointment, had had an opportunity

The fundamental principle thus es-tablished is that if the legislature, either before or after the happening of vacancy, has had an opportunity n there is no power in the State executive to appoint. The result Quay. No fatal to the claims of Mr. Quay. danger or evil has resulted to the gov-

re submit that the Senatefor its own honor and dignity, should stand by its previous solemn and de-

sie view. Quoting section 3, article 1, of the Constitution, the minority say that the failure of the governor to call the legislature together to elect a senthe does not act to deprive the governor of power of appointment. Referring constitutional provision, the

Does the language of the Constitu-tion of the United States mean just what the constitution of the commonwealth of Pennsylvania says, 'In case ef a vacancy in the office of United States senator in a recess between eesor does it mean that the vacancy must be one which comes by chance, % that it does not apply at all to the case of a vacancy at the beginning of term, which does not come by chance but is foreseen and inevitable?" This question is answered as follows:

"It the words have the former meaning, then all distinctions between cases where a legislature has been in session and those where a legislature has not



ACTS GENTLY ON THE

KIDNEYS, LIVER AND BOWELS CLEANSES THE SYSTEM

DISPELS EFFECTUALLY, OVERCOMES HEADACHES HABITUAL CONSTIPATION ITS BENEFICIAL EFFECTS. GUISPINIA FIG SYRVP &

been in session between vacancies at the beginning of a term and vacancies beginning after the term itself has begun and the office for that term once filled, are without importance. We think that the former is the true meanwas the intent of the Constitution to provide, as far as possible, that every State should have two senators. First-The constitutional convention

hesitated between conferring the power f appointing senators upon the executive and the legislature in the State in the beginning. Like the legislature, the executive of the State was supposed to represent the will of the people. der the Constitution then existing, he appointed all State officers and appointed judges, who held their offices for life. For there is no reason to suppose that they considered the executive

an unfit instrument for such appoint-ment. And they settled the question by giving the power of permanent apointment to the legislature and of tem-orary appointment to the executive.

"Second-We can conceive no reason likely to have influenced the framers of the Constitution for making a distinction between cases of vacancy occurring in one way or at one time and vacancies occurring in any other way or at any other time. The offices of senator may be at any time of infinite importance to Continuing the report says:

Thus construed, this clause of the Constitution affords every facility for always keeping the Senate filled with the interests of a State. Upon a single vote may often depend and sometimes has depended the fate of measures which would bring prosperity or misery tors who are real representatives | into every workshop and almost every heir respective States. A senator | family in Pennsylvania. We do not beenacted it would have occurred to any-body that if a senator died within a week of the adjournment of the legis-lature or at a time when there were three parties in the legislature who could not agree, or at a time when the two houses who formerly made an election by concurrent vote were of ways of thinking in politics so different that they could not be reconciled, that the State must remain unrepresented until a new legislature should be chosen

"They meant, as we believe, that for the interest of the State and the interest of the whole country, the Senate should always be full, so far as they could devise a constitutional mechan-ism to accomplish that purpose."

They say further that "The language of the very clause in question cannot be construed as the opponents of Mr. Quay would construe it, or in any other way than the undersigned construe it, without destroying its own purpose. If there be no power in the executive of Pennsylvania to appoint a successor to Mr. Quay under this clause of the Constitution there is no power in the legislature to choose such successor until the end of the term; and in every case where a senator dies or resigns, the legislature is not in session, or where, after such death or resignation the legislature has met and adjourned without a choice, or whatever, at the beginning of a term, the vacancy remains unfilled, it must remain unfilled until the end of the six years, according to the logic of the majority of the committee

On another point the minority says:
"It is said that if the legislature has een in session after a vacancy and has failed to fill it the State is in fault that the legislature has neglected its duty, and so it is not unjust that the State should suffer. There are two answers to this argument. First, that it is for the interest of the whole peo ple that every State should be fully represented; and, second, that there is no fault to be imputed to the legisla ture of a State or to the people where a majority vote is required, if there be a failure to elect a President for want of a constitutional majority, a case provided for by conferring a power upon the House of Representatives voting by States, is the case of fault or negli-gence on the part of the people?" The minority then give considerable

attention to the various cases and con-

clude as follows: "The case of Allen, of Washington, was decided with the Lee Mantle case and without argument, a decision which Mr. Beckwith, of Wyoming, sub. mitted without further contest. that time there was an earnest division in the Senate on an important question relating to the currency, which created for the time being more earnest differences of opinion than those existing be-tween the two great political parties on other questions. It was a time not favorable to a dispassionate, non-partisan judgment. We prefer the authority of the New Hampshire case which was acted on, also in the case of Pasco of Florida, and we think that a decision which must inevitably deprive States in the Union for long periods of time of their rightful representation under the Constitution, will not be permitted long to stand, and that no settlement of the question in derogation of the rights of the States and, as we con-ceive, in violation of the intent of the framers of the Constitution, should be



acquiesced in.

If every one re alized how absolutely health depends upon a vigorous stomach they would keep the Bitters constantly on hand. As a medicine it is invaluable. An occasional dose will keep the

KRUGER IS CONCILIATORY.

But the Boers Will Fight to the Last for Independence.

Dr. Leyds Says England Will Have to Send More Troops Yet, Before Beating the Transvaniers.

New York, Jan. 23 .- A Brussels correspondent of the World obtained the following statement from Dr. Leyds, the Transvaal envoy extraordinary in Europe, before he left for Paris yesterday on his diplomatic mission:

"In view of the new and critical phase into which the war is now entering, I send to the people of America a few words on the subject of any eventful proposals in regard to the suspension of hostilities, a desire for which appears to be gaining strength on both sides of the Atlantic.

"I am as confident as ever of the ultimate triumph of our cause. A temporary success of the British arms would merely have the effect of infusing fresh vigor into our men and strengthening their determination to hold out

at whatever cost.

"While the actual fighting strength of both forces is only now about equal, England might even double her army now in South Africa without crushing

our powers of resistance.
"But, however resolved to continue
the struggle, we have ever been desirous to take advantage of any turn in affairs which might leave the doors open to terms of honorable settlement.

"And I am grateful to Mr. Stead and that considerable portion of the public, both British and American, who are agitating the discontinuance of the war on terms satisfactory to both belligerents.

"Although not a signatory to the peace conference, the Transvaal has ever been willing to profit by that por-tion of The Hague convention which invites friendly interference on the part of a neutral power. Moreover, indica tions have not been wanting since the outbreak of hostilities that President Kruger would never bar the door to a resumption of those negotiations which were broken, if not through the bad faith of the British government at least by an unfortunate misunderstanding which friendly conference might at that

time have settled. "But it is not our place-especially while England is hurrying fresh troops to South Africa-to make the first advance. Past events absolutely preclude such a course, and I am equally confident of the future.
"Yet this does not alter the fact

that President Kruger's attitude is and will remain one of conciliation and that would be both ready and desirous to treat on any terms which assured the South African Republic that independence so much insisted on in a British statement during the earlier period of the negotiations."

BUTTER FOR OTHER PEOPLE

Government Encouraging a Foreign Market for the Foreign Product.

European and Asiatic Countries, and

Chicago, Jan. 23 .- A special to the Tribung from Washington says: Dairymen throughout the country will undoubtedly be interested in the efforts of the agricultural department to create a market for dairy products in Europe and Asia. Today Secretary Wilson sent to the House the report of the operations of the bureau of animal industry, which deals with this subject. The report says special agents have visited Great Britain, France, Germany, China, Japan, Hawaii and the Philip-

pine Islands, and made arrangements for experimental exports of butter in those countries. Trial shipments to Germany and France have demon-strated the markets for choice dairy products from America were by no means as good as in Great Britain while the difficutlies in transportation and the import duties imposed added to disadvantages experienced. Accordingly the experimental exports made almost every week during the year of 1898 and until the summer of 1899 were confirmed to England, and mainly to the market of Manchester. The desired information having been obtained by these experiments, extending through three years, they were dis-continued last May. Then work was immediately begun on similar exports from San Francisco to Pacific ports. No results from these experiments can as yet be reported. Experimental ex-ports of selected creamery butter to Manchester for more than a year were highly satisfactory. The result was a good reputation well established for American butter in that district and he merchants urged shipments larger quantities. Excepting an occasional variation from the standard and a few instances of deterioration inci-dent to imperfections in the facilities of transportation, this butter nently satisfactory to merchants and onsumers. It replaced Danish butter of the first quality although the mer-

in prices.

Refrigerating transportation cannot be furnished by the steamship lines on the Pacific, and this may not be desirable at present, as cold storage plants are not to be found at most of the Oriental markets. It will be necessary, therefore, to send all butter, and per-haps cheese, as well as canned and condensed milk and cream, in heremeti-cally sealed packages to preserve their contents during long voyages in hot climates. The art of canning butter so will remain in good condition for months and when subjected to great changes of temperature has not changes of temperature has not yet been brought to perfection in this

chants demanded a slight concession

Fortune for Charity. San Francisco, Cal., Jan. 23 .- The Call says: When the will of Captain I, Friedman, who died in he Palace hotel Sunday morning, is opened, it found that an estate valued at \$750,000, three-quarters has been given to charity. After bequests which will reach an aggregate of \$500,000 are paid, the residue is bequeathed to the Hebrew Home for aged and disabled persons. This legacy will amount to at least \$250,000.

OFFICERS OF THE Y. M .C. A. Doctor Silver Enters Upon His Fourth Term.

The directors of the Y. M. C. A. met last evening and elected officers to serve for the ensuing year, as follows: Dr. E. V. Silver, president; Prof. W. H. Tibbals, vice president; Samuel Raney.

ecretary; J. P. Evans, treasurer. Dr. Silver, who now enters upon his fourth term as president, will announce the standing committees this week. Mr. Raney, who succeeds John T. Axton as bowels regular. secretary, is thoroughly familiar with the Y. M. C. A. work and a popular

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DAVIS IS A COOD OFFICIAL

Assistant Secretary of the Interior Will Not Retire.

His Excellent Record-Trip to South Africa Solely on Account of His Health, and to See the Country.

New York, Jan. 23 .- A special to the Tribune from Washington says:

Trustworthy information here does not sustain recent stories in regard to the prospective retirement from the interior department of the assistant secretary, Webster Davis, now in South Africa. These stories have endeavored to make it appear that Mr. Davis's trip to the Cape is the forerunner of his retirement to private life. It has been asserted that President McKinley was dissatisfied with his administration of his office as assistant secretary, particularly his rulings with relation to pen-

These statements need no denial to those who are familiar with the relations between the assistant secretary and the President.

Mr. Davis, after Major McKinley's election, announced his candidacy for the place of U. S. attorney for the western district of Missouri, and shortly after the inauguration came to Washington and presented his papers. The following Saturday he met the President at one of the public receptions. To the surprise of the young Missourian, Mr. McKinley invited him to step behind the line of the receiving party. When the reception was over he accom-panied the President to his private office, and to his utter amazement was informed by Mr. McKinley that the latter had already seen his application for U. S. attorney for the western district of Missouri, but that he would rather have Mr. Davis accept another office, The President said that he had not then decided what place he could offer. Within a week the President informed him that he had decided to give him the assistant secretaryship of the interior. Mr. Davis accepted the office, and his appointment followed a few days later. From that day the relations days later. From that day the relations between the young Missourian and the chief executive have been the most cor-Although the youngest man who has

ever filled the place of assistant secretary. Mr. Davis has accomplished more in that office than any of his predeces. ors, and at the same time has taken an active part in many political cam-

Early in 1898 some friction arose be tween the commissioner of pensions and the assistant secretary of the interior, by reason of the fact that many of the decisions of the pension office were re versed by the assistant secretary. The commissioner of pensions frequently appealed the cases decided by the assistant secretary to the secretary of the interior. In each of these cases the decis ion of the assistant secretary was sus-tained, notwithstanding the fact that many of the cases were referred to the attorney general of the United States for a judicial opinion, and many more to the assistant attorney general for the interior department. The records of the interior department show that in not a single case has a decision of Mr. Davis been reversed, but, on the contrary, they have all been sustained by the

secretary.

After the retirement, last March, of Cornelius N. Bliss as secretary of the in-terior, it was currently reported that and Secretary Hitchcock. But there has certainly been no friction between the two in the last six months. On the contrary, the utmost harmony has prevalled. Last fall Mr. Davis was invited and took a prominent part in the political campaign in Ohio. As a result he returned to Washington in impaired health, and at the suggestion of his physician decided to take a long sea voyage. The war in South Africa had begun and Mr. Davis concluded to visit He called on Secretary Hitchcock

and asked for an indefinite leave of abrence, explaining his reasons therefor, which was promptly granted. If Mr. Davis has any intention of retiring, it is not known to his friends here.

NEWSPAPER MAN ARRESTED

Wanted in Sacramento for Grand Larceny-Stealing Diamonds.

Robert Stickney, allas Snowden, who was arrested yesterday afternoon by Detective Sheets, is badly wanted in Sacramento, Cal., for grand larceny. It was last Sunday that Chief Hilton received a communication from Chief of Police Sullivan of Sacramento requesting the officers here to look out for Stickney, and giving a brief description of the man. Yesterday Detective Sheets located his man at the Raybould block Stickney's wife was with him. The information from California is to the ef-fect that Stickney is a newspaper man and was recently employed on the San Francisco Chronicle. It is said that he became infatuated with some woman who had left her husband and the two went to Sacramento and fived together, but only for a short time, as their funds were soon exhausted. Then, it is as-serted, Stickney stole the woman's dia-

EARLINE

came here with him and whom he claims is his wife. When taken into custody Stickney made the following statemen

The woman gave me the earrings to same time, and we lived on the money, but when I rejoined my wife and she made up with her husband, in order to square herself with him she says I her earrings and soaked them Why, she has the pawn ticket now, and she knows her jewelry is in Sacramento. I haven't seen it since, but I will go back and face the charge, without demanding requisition papers."
The accused is a man of splendid ap-

pearance, is well dressed and bears evi-dence of education and refinement. His wife is a handsome little woman. She seems not at all concerned at the ar-rest of Stickney. The authorities at Sacramento have been apprised of the capture and Stickney will be taken to California. An officer is expected to arrive from Sacramento this evening or tomorrow.

AMUSEMENTS.

The sixth performance by the Nance

O'Neil company was given last night at the Theater before a fair audience. It would no doubt have been larger had a different play been chosen, but "Camille" is a tale that has so often been told in Salt Lake that even Miss O'Nell's popularity could not overcome the feeling of partial indifference to it. All the respects in which this version of "Camille" is a "new" one are not apparent, unless one sat with the old play book to make comparisons as he went along. The main difference seems to lie in the fact of the costuming, which places the period some sixty years back, and better fits the romantic atmosphere of the play, than the up-todate dress suits in which it is usually rendered. Miss O'Neil, too, makes a decided departure from most of her pre decessors in the fact that she discards the racking cough which always made fit of coughing in the first act, and a spell of fainting, to indicate ence of the disease that will ultimately prove fatal, is the one suggestion that the heroine is a consumptive. In this respect the new rendition is a decided improvement over the old. In Cami Miss O'Neil again proves that there is no height in dramatic action which she cannot scale. While her role of Camille is not the well rounded, complet study from first to last, that her Magda is, in places it rises above that creation. Certainly she has done nothing finer than in the act where she sinks upon the floor and bewails her fate after learning from Armanda's that she must take the step that separates her from her lover. It was not acting at all, it was life. Equally terrible in its real-istic effectiveness was her death scene, and while her earlier work during the play had been rewarded with hearty curtain calls, the audience here paid her the highest of all tributes, by allowing the curtain to descend in perfect silence; the absolute hush that fell over the house, caused by her simulation of the gradual approach of death, was almost painful, and the most blase theatre goer was not ashamed to be seen wiping the tears from his eyes as he silently wended his way out of the Theater. Miss O'Neil wore some beautiful stage gowns and her dressing of the part throughout was superb. As in Jewess' she suffered a lit-at times from the lack support keyed up to her own high strung and tense conception. Mr. Clement was uneven. Sometimes he gave the impression that he might be doing Armand for the first time; plaintive finish of the play he acquitted himself admirably; but one rises from seeing Mr. Clement in this round of plays with the feeling that, admirable artist though he is, his forte lies along the lines of character work rather than the emotional or heroic.

music with which the play is filled, was exquisite. "Camille" goes tonight and tomorrow afternoon for the last time. Plays may come and plays may go, but farce comedy bids fair to go on forever. At the Grand last night the house was thoroughly filled in all jurts, and the light comedy skit "His Better Half," with the usual accumulation of darkey monologues, dances and specialty acts, etc., seemed to go with the same old fervor which always greets such works at the Grand. While some of the features have been better done, the whole thing goes with a rush and makes up a merry evening, and without doubt it will do good business on the two remaining nights of its engage-ment. The best individual members ment. The best individual members of the company are Sue Belle Mead, and Burton Swor, and Edith Pollock, who was once a member of the Grand Stock Co., did some clever soubrette

Mr. Hill's delineation of the elder Du-

val was a careful one, and Miss Allen

stage settings were most beautiful, and

Mr. Weihe's rendition of the "Traviata,

made an excellent "Prudence."

ANNIVERSARY BALL.

Officers' Association at Christensen's Hall on March 26th.

The officers' association of the National Guard of Utah met last night with the following named officers present: General John Q. Cannon, Colonel J. D. Ford, Major H. M. H. Lund. Captains J. A. Greenwald, O. H. Hassing, M. Y. Cannon, L. E. Gilbert, L. S. Heywood; Lieutenants W. H. Riley, W. H. M. Burningham, W. H. Tobias, A. P. Goodmanson, C. C. Forsland, J. Durand, C. Carstensen; also several noncommissioned officers.

It was decided that the anniversary

ball should be given on the evening of March 28th at Christensen's hall. The organization of a regimental band was also talked of and will be further considered at a future meeting.

ALLEGED CRAZY MAN DISCHARGED

The charge of insanity against Frank Doe King has been dismissed without even an examination of the alleged crazy man. It seems that King and F. T. Voight, the man who swore to the complaint, had a quarrel last Saturday and the latter getting the worst of it conceived the idea that King was insane. When the officers went to arrest King they concluded there was nothing to support Voight's charge.

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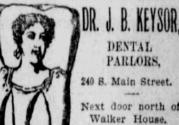
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